

TO: Persons Interested in the Use of Credit Information and Insurance
Scores in Personal Insurance
FROM: John Morrison, Montana State Auditor, Commissioner of Insurance
DATE: June 11, 2005
RE: Advisory Memorandum
New Credit History and Insurance Score Legislation; **SB 311**

The 2005 Montana Legislature has enacted the Montana Use of Credit Information in Personal Insurance Act, which gives the Montana Department of Insurance the authority to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information. The new law goes into effect on October 1, 2005.

“Credit information” is defined as any credit-related information derived from a credit report, found on a credit report itself or provided on an application for personal insurance. “Personal Insurance” means private passenger automobile, homeowners, motorcycle, mobile homeowners and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile and recreational vehicle policies. “Insurance Score” is defined as a number or rating that is derived from an algorithm, computer application, model or other process that is based in whole or in part of credit information for the purposes of predicting the future loss exposure of an applicant or insured.

Insurers that use credit information to underwrite or rate risks shall file their scoring models or other scoring processes with the Commissioner. A third party may file scoring models on behalf of insurers. These filings will be considered a trade secret.

The credit information or insurance scoring model may not utilize the following factors in a negative manner for underwriting or rating:

- Income, gender, address, zip code, ethnic group, religion, marital status or nationality of the consumer;
- Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer’s own credit information;
- Inquiries relating to insurance coverage;
- Collection accounts with a medical industry code;
- Multiple-lender inquiries from the automobile or home mortgage lending industry and made within 30 days of one another unless only one inquiry is considered;
- Number of credit inquiries;

- A consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;
- A loan if information from the credit report indicates the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both;
- A consumer's total available line of credit or total debt. However, an insurer may consider the consumer's bill payment history on the debt or the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.

The insurer shall, on written request from an applicant or an insured, provide exceptions for a consumer whose credit report has been directly affected by an extraordinary event. An "extraordinary event" is defined as expenses related to a catastrophic injury or illness, temporary loss of employment, death of an immediate family member or theft of identity. An insurer may:

- Require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events the insurer previously considered;
- Consider granting an exception to a consumer for an extraordinary event not included in the aforementioned definition;
- Not be considered to be out of compliance with its filed rules and rates as a result of granting an extraordinary event exception.

An insurer that uses credit information to underwrite or rate risks may not:

- Deny, cancel or not renew a policy on the basis of credit without consideration of any other applicable underwriting factor independent of credit;
- Base an insured's renewal rates for personal insurance upon credit without consideration of any other applicable factor independent of credit;
- Take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit;
- Take an adverse action against a consumer based on credit unless the insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewed.

An insurer that uses credit information to underwrite or rate risks may not consider the absence of credit information or an inability to calculate insurance score in underwriting or rating unless the insurer does one of the following:

- Treats the consumer as otherwise approved by the Commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;
- Treats the consumer as if the consumer had neutral credit;
- Excludes the use of credit and uses only other underwriting criteria.

An insurer that uses credit information to underwrite or rate risks may not use credit information unless not later than every 36 months following the last time that insurer obtained current credit information for the insured, the insured recalculates the insurance score or obtains an updated credit report. Regardless, the insurer:

- At annual renewal shall reunderwrite and rerate the policy based upon a current credit report or insurance score, if requested by the consumer or the consumer's agent. An insurer does not need to recalculate the insurance score or obtain a credit report more than once in a 12 month period;
- Has the discretion to obtain the current credit information upon any renewal before the 36 months provided for;
- May but does not have to obtain current credit information for the insured if the insurer is treating the consumer as approved by the Commissioner, the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers, credit was not used when the policy was initially written or the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon factors other than credit.

If the credit information of an insured was incorrect or incomplete and if the insurer receives notice of that the insurer shall:

- Reunderwrite and rerate the consumer within 30 days of receiving the notice;
- Make any adjustments necessary consistent with its underwriting and rating guidelines;
- Refund to the insured the amount of any overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

If an insurer utilizes credit information in underwriting or rating a consumer the insurer shall disclose either on the application or at the time the application is taken that it may obtain credit information in connection with the application. The disclosure must be written or in the same medium as the application. The insurer does not have to provide the disclosure upon renewal if the consumer has been previously provided a disclosure statement. The use of the following disclosure statement constitutes compliance:

- In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score.

An adverse action means the denial, nonrenewal or cancellation of coverage, an increase in any charge for coverage, failure to give an otherwise available credit-related discount or a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage. If an insurer takes an adverse action based upon credit information the insurer shall:

- Provide notification to the consumer in accordance with the requirements of the federal Fair Credit Reporting Act;
- Provide notification to the consumer explaining the reason for the adverse action;
- Provide reasons that are clear and specific language that a person can identify the basis for the insurer's decision to take adverse action;
- Provide notification that includes up to four factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score", will not suffice. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors comply.

Violations of this Act may result in the following possible penalties:

- An action for insurance fraud pursuant to Title 33, Chapter 1, Part 13, MCA;
- A cease and desist order;
- Administrative fines up to \$25,000 per violation for any violation of this act.

Information may be obtained at <http://sao.mt.gov>; or call 1-800-332-6148 [444-2040 in Helena].

The complete text of the bill may be obtained at <http://leg.mt.gov> [go to 2005 Bills, and look up SB 311].

The scoring models or other scoring processes must be filed with the Commissioner. Filing may begin July 1, 2005 but all models must be filed no later than September 30, 2005 to meet the October 1, 2005 implementation. The filing must include a letter describing how it complies with the Act